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AND OTHER ESSAYS OF AN EROTOLOGIST

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THE RIGHT OF THE FIRST NIGHT

(THE JUS PRIMAE NOCTIS)

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In our present age in which an increasing number of peculiarly personal rights and liberties are becoming ever more and more subject to regimentation and repression—from the right to purchase cigarettes and liquor in certain states to the privilege of reading certain books or seeing certain plays that happen to have fallen under the disfavor of the all-knowing, and all-powerful, Church—it comes as a welcome bit of solace to reflect that in one thing at least, in one most personal and sacred prerogative, we have at length achieved complete emancipation from an old and long-standing legal prohibition: the privilege of a man to deflower his bride freely and as he sees fit.

But it was not always thus. In many parts of the world for many centuries, extending back to an indeterminate point of origin in dim antiquity, the *jus primae noctis* [which is Latin for "Right of the First Night"] obtained under the mandate of which the pleasant task of deflowering a new bride of one of the common men, or peasant class, fell not as logically it should have to the husband, but to the lord or nobleman under whose jurisdiction the newlyweds lived, or in some localities to the regnant priest of the vicinity. This fact caused the institution to be called in France by the term *Droit du Seigneur* or "Right of the Lord." Other Latin names given the practice were: *Jus cunni, Jus cunnagii, Jus coxae locandae, Jus coxae luxandae, Culagium*; in French: *cullage, cuissage, jambage, virginale;* in Spanish, *derecho de pernada*; in Italian, *gambada,* etc.

There has been much debate about this custom as to just how literally the lord or priest carried out his "right," and even as to the existence of it as anything more than a sort of scholarly superstition. As reputable a historian as Dulaure feels no doubt concerning its currency in a number of countries. "We must now speak," he says, "of that odious privilege that has existed in France and other countries for many centuries, by which the secular and ecclesiastical lords stole from husbands the first-fruits of marriage and came to stain the nuptial couch with their impure presence. This privilege was known in Scotland, in England, under the names of *marchet* and *prelibation;* in Piedmont, under that of *cazzagio;* and in France, under those of *cullage, culliage,* or *jus cunni.*"

Dulaure then goes on to relate how this practice was the motivating cause for the founding of the city of Quercy. It seems that the monks of Saint Theodard had followed this practice over the inhabitants of Mont-Auriol, a town that was situated by their monastery. At length the townsmen became so outraged over the tyranny of this monkish exercise of the privilege of the *jus cunni* that they petitioned their overlord, the Comte de Toulouse, who allowed them to set themselves up near one of his chateaux in the vicinity of the abbey. There they went without delay and, freer and more secure from the domination of the monks, they prospered, and thus was originated the sizable town of Quercy.

Evidences of the exercise of the *jus primae noctis* can be traced back to quite ancient times. Reference to it may be found in the writings of Heraclides Ponticus, which date from some time around the 4th century B.C. He speaks of the island of Cephalonia which, in times which he

in his turn appears to have regarded as "ancient," was under the sway of a tyrant who made it a practice to deflower all of his maiden subjects. Even then the custom had its conscientious objectors, and according to the story given by Ponticus it was through this that the king met his end at the hands of a certain Antenor who took it on himself to save the girl from the necessity of paying up by dressing as a woman, gaining entrance into the room where the king collected his virginal levies and slaying him with a sword hidden under his cloak, for which act he was chosen to be the people's next ruler.

There are a number of other references to the early practice of this custom. That quite ancient collection of Hebrew writings, the Talmud, at one place declares that the young bride should first sleep with the Taphsar before being free to go to bed with her husband. The ancient historian Herodotus reports that the maidens of the Adirmachides were turned over to the King as soon as they were ready to be married, and that he deflowered them if and when he got around to it. Comparable accounts may be found in the writings of Valerius Maximus and of Lactantius. There are also a number of Arabian books dating from the 9th to the 14th centuries that contain tales indicating the currency of the *jus cunni* in that country during that period. According to Barros, who wrote around the middle of the 16th century, the women of the island of Canaria "might not marry until they had first been corrupted by those nightly gentlemen." And the virgins of Teneriffe, on the authority of Cadamostus, "could not become women until they had first slept with the lord a night, which was looked on as a great honor."

While in Europe traces and evidences of the custom have been turned up in many places, and especially in France, it is in Scotland that there may be found more concrete proof in the form of a legal decree. It seems that around the year 875 there was a King Ewen III who was so eager after the women that in order to favor his lustful predilections he had set up a law which is mentioned in Boece's Chronicle thus: "Ane othir law he maid, that wiffis of the commonis sal be fre to the nobilis; and the lord of the ground sal have the madinheid of all virginis dwelling on the same." This law continued in effect until 1089, when the bodily tribute was replaced by a symbolic coin tribute. Up until that time, however, there is reason to believe that this law was rigorously observed through all the kingdom, and its discontinuance was in the main due to St. Margaret who persuaded her husband, Malcolm Cammor, to abolish the practice. Reference was also made to this Scottish law by an Italian writer of the early 17th century, one Bonifacio Vannozzi, who declared that much the same custom had previously been in existence in Piedmont, and that a cardinal of the house of Rovere had with his own lips related to him how he personally had burned a charter which conveyed to his house the privilege of deflowering all brides that their vassals married. And it is said that as late as the 19th century there were Russian landlords who were still claiming their right to this privilege.

It has not been among the so-called civilized nations alone that the *jus primae noctis* has existed, but evidences of it have been discovered among numerous primitive peoples. Westermarck [The History of Human Marriage," vol. I, chap. v.] has made an excellent compilation of instances of this sort, from which we shall draw some representative examples. In certain tribes of the Brazilian Indians, the medicine man or the chief has the right of exercising the *jus primae noctis*, while among the Arawaks and at some places in the province of Paria a virgin bride had to pass her first night with a priest. In Cumana, which today is known as Venezuela, all legitimate wives were supposed to be deflowered by the priests, and it was taken to be a serious crime to overlook this ceremony. For some reason, concubines were not included

under this mandate. Among the Cuban Caribs rank was given some consideration in the matter. If the bridegroom, who was rigorously forbidden from sleeping with his bride on the first night, was of the chief class, he sought out other chiefs to perform this office for him; if he was of a lower rank, he asked his equals in rank to discharge this duty; but if he was of the lowest classes, he would seek the "charitable" attention of the chiefs or priests in the matter. Among the Guatemalans it was the high-priest who passed the first night with the bride, while the Nicaraguans had a man they regarded as a "pope" who lived in a temple and whose duty it was to deflower brides on the night previous to the wedding. It is said that among certain peoples in present-day Mexico the *shamans* still claim the right of the *jus cunni*, and with the Kinipetu Eskimos of the Hudson Bay region their *ankut*, or priest, is still accorded this same privilege.

There are some tribes in Senegal, as for example the Ballante, in which no girl can marry before she has been deflowered by the king, and the same power is held by the chief of the Bagele in Northern Nigeria. There is strong evidence that the *jus primae noctis* still obtains among certain of the modern Berbers, though stoutly denied by most of them. In this connection Westermarck has some interesting information to impart which has particular value in that he draws it from his personal experience:

"Two Berbers from the tribe Ath Ubahthi in the eastern part of Morocco, near Ujda, told me that among their neighbors, the Ath Zihri (Zkara), it is the custom for the chief of the village to be secretly sent for by the bridegroom's family to have intercourse with the bride the first night, unless she be a widow or a divorced wife. They said that this is well known to all the neighboring tribes, though denied by the Ath Zihri themselves. This statement agrees with the information obtained by M. Moulieras, although, according to him, the person who is said to perform the act belongs to the caste of the *rusma*, or spiritual leaders of the tribe. It is impossible for me to decide whether there is any truth of not in these accounts, but they may perhaps derive some support from certain curious customs among other Berbers in Morocco, as also from some statements relating to the Beni Ulid, an Arab-speaking mountain tribe in the neighborhood of Fez. An old man from the Hiaina, another tribe near Fez, told me that formerly it was the custom among them that on the evening of the day when the bride arrived at her new home the bridegroom, accompanied by members of his family and women, went to a neighboring village to fetch from there a man to spend the first night with the bride and have intercourse with her. When they fetched him the women sang, 'Rejoice, O lady, and continue to rejoice, and the perforator has come to you from the Beni Ulid.' According to another account given me by two Berbers from other tribes in the same part of Morocco, it was the custom of the Beni Ulid that, if the bridegroom was not strong enough to deprive the bride of her virginity, he asked his best-man to inform his father about it and tell him to send for some man who was reputed for his virility. A messenger on horseback was dispatched to fetch such a man, who was then received by the women singing a ditty similar to the one already mentioned. He was paid for his service."

According to an old Chinese account dating from around the end of the 13th century, parents of the old kingdom of Cambodia called on the Buddhist or Taoist priests to take the virginity of their daughters before their marriage. This ceremony was known as *chin-than* and was carried out on a certain day once a year which was set by the magistrate of the locality. Each priest was permitted to deflower but one girl each year, and he received a generous recompense for this service. Due to

the difficulty of getting together this requisite rich reward, girls of the poorer families sometimes had to wait until as late as their 11th year before they could get married, while the daughters of the rich ordinarily married at the age of from 7 to 9—another evidence of the power of wealth. However, there were certain philanthropic persons who took it on themselves to furnish poor parents with the money they needed for the deflowering of their daughters, their motive being that this was regarded as a most righteous action which enabled them to store up credit in the Chinese heaven of the time.

On the Malabar coast it has long fallen to the lot of the Brahmans to deflower brides. A writer of the early 16th century, de Barthema, relates that when the king of Calicut takes a wife he chooses from among the Brahmans the most worthy and honored and has him pass the first night with his wife so that he may deprive her of her virginity. And de Barthema naively adds, "do not imagine that the Brahman goes willingly to perform this operation; the king is even obliged to pay him 400 of 500 ducats." He further maintains that it is the king alone in Calicut who follows this practice, but other informants say differently. A man, Hamilton, who passed considerable time in the East Indies around the end of the 17th and early 18th centuries, reports: "When the Samorin marries, he must not cohabit with his bride till the Nambourie or chief priest has enjoyed her, and, if he pleases, may have three nights of her company, because the first fruits of her nuptials must be a holy oblation to the god she worships: and some of the nobles are so complaisant as to allow the clergy the same tribute; but the common people cannot have the compliment paid to them, but are forced to supply the priests' place themselves." The explorer Roggewein declared that the Brahmans had introduced into Cochin the custom that a newly married man was strictly forbidden to sleep with his bride on the first night but instead had to allow this privilege to one of the Brahmans, or to some other man if no Brahman was available.

It would require many pages simply to enumerate all the localities at which and peoples with whom the *jus primae noctis* has at some time or another been in vogue, without even going into the details of its practice, but our purpose here will be sufficiently served by adding just one more instance, and that one as recent as 1903, as reported by Brailsford in the *Fortnightly Review*:

> "For a certain sum paid annually, an Albanian chief will undertake to protect a tributary village, or if the village is outside the Albanian sphere of influence, it is generally obliged to have its own resident brigands, who may or may not be Albanians. If the village belongs to a Turkish landlord, these men are generally chosen from among his retainers. They are known under the name of *bekchi*, or rural guards . . . The rural guard exacts a substantial ransom in cash for his services. He levies certain traditional dues, *e.g.*, blackmail on every maid who marries. The sum varies with the ability of her father and her husband to pay, and in default of the payment, the *bekchi* will exercise the *jus primae noctis*."

No inconsiderable portion of the interest attaching to this odd custom lies in the probable basis or bases of its origin. One of the more logical of these is the "communal" theory. According to this, in brief, woman was anciently regarded (and may still be found so regarded in certain primitive societies) as the communal property of all males of the tribe or community. Thus, when a man wished to take exclusive rights to a woman by making her his wife, these pre-existing and superior communal rights had first in some manner to be satisfied. In the early days this was done in a variety of ways—payments to the chief, sacrifices, trials and tests, and the like. The *jus primae noctis*, then, may be regarded as a vestige of the old communal view of women, and as these communal rights were gradually taken away from the male

population in general where at first they had lain and became vested in the chief, king, or overlord of the community, the sacrifice of the bridal first fruits came to constitute the fee for the transfer of the communal rights in a woman held by the sovereign for the community to a private individual.

The most obvious view of the *jus cunni* would be simply that it constituted an evidence of the despotic authority of the head-man or ruler. In primitive societies the chief often had absolute power over the life and death of his subjects, so why not over the disposal of virginity also? Then again, it might be seen as a convenient means of serving the unbridled lust that tyrannical power over others seems so often to breed. But what will probably appear as the strangest of all possible motives to us who so highly extol the beauties of virginity and the rare privilege of being the one to enjoy it is the attitude held by a great many primitive peoples that the deflowering of a virgin is a task to be avoided, either as a bothersome chore or as a dangerous piece of business, and from this point of view the *jus primae noctis* may be regarded as custom designed to relieve the bridegroom of the onerous but necessary prelude to connubial activity.

The methods that have been employed for excusing the bridegroom from the direct defloration of his bride are numerous and varied. In the event he himself must tackle it, he is likely to utilize a means other than that intended by nature. Of the Jibaros in Ecuador, Dr. Rivet says: "According to certain Indian informants, the groom is supposed to open the vagina of his wife with the aid of a bone prepared for that purpose, so as to render her suitable for coition." Certain natives in Central Australia accomplish this same operation on their brides with a stick after they have taken them to their own camp, while in Samoa public defloration of the new wife with the groom's forefinger makes part of the regular wedding ceremony. A comparable custom of finger defloration has existed among the Egyptians. In 1840, the Frenchman Clot-Bey reported: "The husband deflowers the bride with the index finger of his right hand wrapped in a handkerchief of white muslin . . . This handkerchief, stained with the blood of the young victim, is presented to the parents, who congratulate her on her chastity and give every evidence of their joy. This bloody proof of the purity of the bride is then presented to the wedding guests."

In the cases where the brides or brides-to-be have their virginity broken by persons other than the groom, this person may be one of the girl's parents or some other person, who may perform the operation either digitally or instrumentally, or it may be accomplished by some other man through coition. In many instances the girls are deflowered as part of their early life and to get them fit for marriage well before their marriage is even planned. Frequently virginity is regarded as something of a nuisance and its removal as a tiresome but necessary chore to be disposed of as soon as possible, just as we Americans have fallen into the vogue of having our children's tonsils taken out as soon as convenient regardless of whether or not they are diseased on the theory of "the sooner the better." Noel relates that among a people of Madagascar known as the Sakalava the young girls deflower themselves when they have not been deflowered by their mother at a tender age, and that a father would never think of marrying off his daughter before this operation had been properly carried out by one or the other; and it is only princesses who are left intact. In some parts of ancient Peru it is said that when a girl had been asked for in marriage she was brought out in public and in the presence of all the relatives who had made part of the marriage contract she was deflowered by her mother so as to establish that good care had been taken of her. Steller asserts that if among the Kamchadal a groom should discover that his bride was a virgin he would place the blame on his mother-in-law, and con-

sequently mothers are eager to deflower their daughters in early girlhood so as to escape any likelihood of such a charge. A people of Baluchistan known as the Jatt will have an old woman among them whose business it is to deflower a bride privately with a razor a few hours before the consummation of her marriage, the belief being that such consummation is the only enduring cure for the resultant wound. In portions of British Central Africa the girls are taken into the bush by the older women for an initiation ritual which includes a forcible mechanical vaginal dilatation which the girls are told must be followed by copulation with a man.

In many places where the defloration is carried out by men other than the groom, the conditions of the act are such as to prevent its being regarded as a true instance of the *jus primae noctis*, for the latter is a right or privilege of some person in power over the newlyweds to which the husband does not at all accede with pleasure, whereas in the former case the breaking of the bride's maiden-head is a task that the husband eagerly avoids. In parts of Central Africa when the time comes for an unmarried girl to be "danced" or initiated by her father, he has to employ a man to go to bed with and deflower his daughter on the night after her initiation, and to this man he has to pay one fowl, one bowl of flour, and one small bowl of beer. After this one night the girl is not supposed to have any future intercourse with the man. Stannus tells us that there are tribes near Fort Johnston in British Central Africa in which a virgin when she marries is "broken" by one of the husband's friends before he will lie with her. The action of this friend is picturesquely designated as "eating new things." Moncelon affirms that in New Caledonia "when a husband cannot or will not deflower his wife, he gets hold of certain individuals who for payment discharge this duty in his place. These are the appointed *piercers*." At the time of the discovery of the Philippine Islands there were men there whose job it was to remove the virginity of maids and who got paid for doing it, the attitude being that virginity was a hindrance to a girl's marriage. This trade of professional deflowering, however, seems to have died out sometime during the 17th century. Rivers tells about localities in Southern India where a man of strong physical constitution, who may be from any clan save that to which the girl belongs, "comes and stays in the village for one night and has intercourse with the girl. This must take place before puberty, and it seemed that there were few things regarded as more disgraceful than that this ceremony should be delayed till after this period. It might be a subject of reproach and abuse for the remainder of the woman's life, and it was even said that men might refuse to marry her if this ceremony had not been performed at the proper time."

There are places where the defloration of the bride by persons other than the bridegroom takes on the aspect of a "gang shag," so popular among the wilder of our present-day high school youth. In such cases, instead of one man there is a group of men which have intercourse with the bride before the husband can touch her. In writing about Australia, J. M. Davis gives a good description of an example of this practice:

> "In New South Wales and about Riverina when a young man is entitled to have a lubra, he organizes a party of his friends and they make a journey into the territories of some other tribe, and there lie in wait, generally in the evening, by a waterhole where the lubras come for water. Such of the lubras as may be required are then pounced on, and, if they attempt to make any resistance, are struck down insensible and dragged off. There is also this peculiarity, that in any instance where the abduction has taken place for the benefit of some one individual, each of the members of the party claims, as a right, a privilege which the intended husband has no power to refuse."

There is in East Africa a custom much like this Australian one, save that the capture of the girl is only ritualistic. After the bridegroom has bought the girl from her parents, she runs away and hides, but she is chased by four of the bridegroom's friends whom he has chosen for this task and is soon captured, putting up a great pretense of resistance. She is then carried by the four to the bridegroom's mother's hut where she is confined as a prisoner for five days, during which time she is accessible to the four men, and it is only after they have made use of this privilege that the groom can claim his bride. This custom obtains among the Wataveta and the Wateita. Also, when one of the Masai marries, one or more of his old comrades in arms have a right to lie with the bride. If he should deny them their claim, they call him insulting names and tell him that if they should steal some of his cattle he would have no reason to complain. However, it is possible for him to escape any danger by carrying off his marriage without any show or ceremony, merely buying his bride and taking her home without any ostentation.

It is said that among certain peoples the right or duty (however it may be regarded) of deflowering a girl is her father's. Toward the end of the 17th century Herport recorded that when a Sinhalese granted his daughter in marriage he first went to bed with her himself on the ground that he had a right to the first fruit of the tree he had planted. The exercise of the *jus cunni* over girls by their fathers is said also to have been encountered among the Orang Sakai of the Malay Peninsula and the people of the Eastern Moluccas. The real basis of paternal defloration is a little difficult to arrive at. Although it is often regarded in the light of a right or privilege of the father, there is good evidence that his copulation with his daughter may be more for the purpose of making her acceptable to her husband.

Not the least intriguing feature of this whole matter is the reason that a bridegroom should wish to escape the initial coition with a virgin bride. Some there are who pass it off simply as stemming from his desire to avoid the trouble, but while this may at times enter the scene as a contributory factor, it does not seem too likely as a primary cause, simply because on the face of it it does not appear as the sort of task the average man would envision as overly onerous. Therefore, the most logical grounds for his reluctance to take his bride's maiden-head would be some sort of superstitious fear. One element of such fear is the regarding of the breaking of the maiden-head as an unclean act capable of contaminating or polluting the man. So certain Malayan tribes hold it. If on the morning after the consummation of his marriage a husband belonging to the Yahgans of Tierra del Fuego does not purify himself by bathing in the sea, even in the dead of winter, he is not considered fit to continue eating the flesh of the guanaco or the seal. Reports of many travelers give other instances of this viewpoint.

An important factor in a husband's hesitancy to take his bride's virginity is the primitive superstitious fear of the hymeneal blood that flows in the process. The Vedic legends regard the bridal blood as poisonous and a source of danger. It was thought that the woman as well as the man might suffer the ill effects, and this notion is probably at the bottom of the old German custom of bringing newlyweds new clothes on the morning after their wedding night. Of the New Caledonians Rochas writes:

> "The first intimate coming together is more terrifying for the Caledonian women than for the women of our civilized society whose enlightened mind is a shelter from all superstitious fear. It never takes place without a *legal* purification, with a lustral water consecrated by a sorcerer and called *virginal water*."

The question arises that if the defloration of a virgin is regarded as such a hazardous act, how can anyone be persuaded to carry it out for

the bridegroom. In many cases an obvious answer is that the person is paid for this service, but there are deeper and better reasons. The same primitive mode of thinking that regards defloration as a dangerous action also views the bridegroom as being in an extraordinary state of danger in which he is open to a great variety of evil influences. Consequently, an act that might be extremely dangerous for him would certainly be much less so for another man who was not a bridegroom. In many localities the task of defloration is assigned to foreigners, and as these are not likely to share the superstitions of the natives concerning the act there will be little difficulty in gaining their co-operation. And in the cases where the task of breaking the virgin seal falls to a priest or other holy man it is because his sanctified condition is held to keep him immune from dangers and influences to which the common man is dangerously susceptible.

There is, however, a reason other than immunity from danger for having a priest or holy man carry out the defloration, and that is the supposition that it is advantageous to the bride or to the married couple. Sexual intercourse with a holy man is often thought of as being beneficial. We are told that the native women of Greenland believed themselves most fortunate if they were privileged to be caressed by one of them, and some husbands would even pay them for the honor of having them cohabit with their wives, believing that a child of such commerce would be happier and better than the usual variety. Chenier tells about a saint in Morocco who without any warning one day seized hold of a young woman in the middle of the street and copulated with her, and "her companions, who surrounded her, uttered exclamations of joy, felicitated her on her good fortune, and the husband himself received complimentary visits on this occasion." It is asserted that when the prelates of the Armenian Yezidees go about on their visitation trips and reach a village where they plan to spend a day or two they waste no time in getting married at once, and the girl that is selected becomes so holy as a result of this union that she is regarded as a sort of saint or demon. The prelate may never have anything further to do with, or even see, his bride after the wedding day, but the next man who may want to marry her is nevertheless required to pay the first "husband" heavily before he will give her a divorce. These priestly sexual benefits are valid even toward royalty, and Barthema relates that when the King of Calicut goes on a journey a Brahman, "although he might be only 20 years of age, remains in the house with the queen, and the king would consider it to be the greatest favor that these Brahmins should be familiar with the queen." And Mandelsloe states that there is hardly any man of consequence in Malabar who, when he is going to be away from home for any period of time does not leave his family, and particularly his wife, in the care of a Brahman.

It was beyond all reasonable doubt some such notion of special benefits to be derived from priestly intercourse that was the basis of the conferring the *jus primae noctis* on the priest class. The probable growth of the idea is fairly obvious: from his original selection as the logical deflowerer because of his holy immunity to the dangers of the act, it eventually became his duty or obligation to perform a task so necessary for the welfare and happiness of the community, and finally it evolved into his right or privilege and became truly the *jus cunni*. Much the same influences must have been at work where this power became conferred on the chief, king, or other over-lord. In this connection, speaking of the king of the Ballante, M. Marche comments:

> "For him it is not just a right, properly speaking, but even an obligation, for without this formality a young girl would not be able to marry. This obliges the father who has some daughters who are but little prepossessing to go and make the sovereign a fine gift,

while imploring him to have pity on his daughters who are awaiting from him the right to take a husband."

One thing is fairly certain, however, and that is that the defloration of a bride would never have come to be regarded as a right or privilege unless the act itself had come to be considered as attractive. And this probably furnishes us with the best criterion for determining whether or not a given instance of defloration by proxy is a true case of *jus primae noctis*:—If the basis for it is in a superstitious fear or aversion to the task on the part of the husband and the deflowerer favors him by doing it or is obligated to do it as a duty, we have an instance of mere defloration rite; but when the breaking of the maiden-head is regarded as a desirable action which the bridegroom relinquishes to another more or less reluctantly through force of law or custom, we then undoubtly have a genuine instance of *droit du seigneur.*

In many places, the privilege of the *jus primae noctis* remained in existence much longer than its literal carrying out, and the actual deflowering of the bride by coition with the lord or ruler often became replaced by a money payment or fee given by the bridegroom to the lord. Thus was the ancient right of the ruler to the bride's maiden-head recognized, while the husband was allowed to buy back the physical enjoyment of it for himself. In Scotland, for example, this change-over is said to have taken place in 1089 with the revoking of the law that had granted the king the *jus cunni* over all maidens and the substitution for it of a symbolic coin payment known as the *mercheta mulierum* or the "merchatis of women." The amount of this payment varied in different localities: its amount in Scotland was said to have been half a mark of silver, while in other places it might have run as little as three to five pence. Or, in other cases where there was no cash payment, the defloration by the lord was replaced by some arbitrary or whimsical act on his part. Dulaure states that while the lords of Gascony had the power to enforce the *jus primae noctis* literally had they so desired, they generally confined themselves simply to introducing a leg or thigh into the new bride's bed (to demonstrate, Mantegazza suggests, that they had the right to put both of them in if they wished to), unless the vassals made some sort of settlement with the lord and paid him what he demanded. This variation of the *jus cunni* was designated as *cuissage* or *droit de cuisse,* which might be freely translated as "thigh privilege" or "right." And Saint-Foy, in his *Essais historiques,* gives yet a different sort of symbolic substitution for the *jus cunni*:

> "A lord, who possessed a considerable estate in Vexin Normand, assembled in the month of June all his serfs of both sexes of marriageable age and had them given the nuptial blessing. Then they were served with meat and wine. He placed himself at table, drank, ate, and rejoiced with them. But he never failed to impose on the couples that seemed most amorous, various conditions which he found humorous. He prescribed to some to pass the night of their nupitals in the top of a tree, and there to consummate their marriage; to others, to consummate it in the river Andelle, where they should bathe for two hours naked to a shift, etc."

But though the evidence for the practice of the *jus primae noctis* would appear to be beyond reasonable dispute, there has nevertheless been a good deal of argument, and learned argument, to the effect that the custom has never been much more than a bit of scholarly folklore. As far back as the middle of the 18th century we find Grupen carefully going over most of the testimony favoring the existence of the *jus cunni* and disputing its validity, and about a century later Veuillot attempted to do the same thing. But the outstanding opponent of a literal belief in the exercise of the *droit du seigneur* is Dr. Karl Schmidt who drew up an extensive study of the subject which is really a fine

piece of scholarship, and concludes by dismissing the whole thing as a "learned superstition," claiming that there are no authenticated records of it in law books, charters, or decrees dating from the period in question, and that the tales and legends that tell of its practice have no historical basis. Alexander Herzen states that such a privilege was never in effect in Russia, and declares that if such a thing should have been tried the violation of a female serf would have been as severely punished by law as that of a free woman. However, Herzen then turns right around and admits that a landlord had no difficulty at all in violating any of the daughters and wives of his serfs without danger of legal consequence. This is borne out by a statement to be found in a Russian collection called "Russian Antiquity:"

> "Often N. I—tsh would stroll late in the evening about his village to admire the prosperous condition of his peasants; he would stop at some cottage, look in at the window, and tap on the pane with his finger. This tapping was well known to everybody, and in a moment the best looking woman of the family went out to him."

And there is a further account of another landlord who whenever he arrived at his estate on a visit at once demanded that his manager supply him with a list of all the grown girls. He would then start down this list, take and enjoy each of the girls for three or four days, and when he had exhausted the list he would move on to the next village; and this procedure he repeated every year.

On the whole, it seems that the opponets to the reality of the *jus primae noctis* do not have too good a case to offer. There have been a number of refutations of their contentions, but possibly the most masterful of all is by M'Ketchnie who takes up and answers their arguments one by one, and concludes: "After weighing all the evidence, it is difficult to avoid the conclusion that the *jus primae noctis* was the custom, at any rate in some parts of Scotland, in early times. There is no authority to the contrary, nor have any facts inconsistent with such a right ever been advanced by those who challenge it."

It is commonly held that the best proof of the medieval existence of the *jus primae noctis* is the old marriage fee demanded by lords of their vassals, the *marchet* or *merchet*, about the existence of which there has been no dispute. There is, however, some difference of opinion as to the real significance of this payment, and some deny that it was for the purpose of the bridegroom's buying back from the lord the privilege of sleeping with his bride the first night. Lord Hailes has a somewhat different explanation of it as a sort of fine imposed by the lord under old Scots law. Persons of low rank living on an estate, he asserts, were definitely in a condition of servitude, being forced to remain on that estate and perform certain services for the lord. Since women of necessity lived with their husbands, it resulted that when a woman of that category married a man not residing on the estate, the lord had his "live stock," so to speak, diminished by that much, and he consequently would be moved to demand some sort of recompense for his loss. In the beginning, Hailes maintains, the amount that the girl's father would be required to pay in such a case would approximate the estimated value of the woman, and as the lord had absolute power over those beneath his jurisdiction, the sum might at times be out of all reason. As time went on, however, the lords discovered that the women they lost through marriage to men residing on other estates was roughly balanced by the women they gained through the marriage of their own young men with women from the estates of other lords, so by and large there was no great loss suffered through this marrying out of bounds. As a result the payment for the woman in such cases shrank to a small money payment or fee which was more symbolic than compensatory and served mainly to acknowledge the ancient right of the lord. Re-

garding the *merchet* under English law, Maitland advances very much the same idea by suggesting that at bottom its purpose was "much rather that of preserving the live stock on the manor than that of a *jus primae noctis.*" In support of his contention he points out that the *merchet* was frequently greater for marriage outside the manor than for marriage within the manor, and that there were even fines imposed at times for marrying sons out of the manor, as well as for other acts that might tend to remove them from the lord's power, as for example giving them a clerical education which would enable them to take orders and thus get free of their bondage.

There appears to be little doubt that some form of the *merchet* may have come into existence out of such a basis, but that fact in itself would seem scarcely sufficient to convict the *jus primae noctis* as a "mere superstition." After all, it is quite possible for fees to the lord in connection with the marriage of his vassals to have originated in more than one source, and it could as well have come about as a symbolic substitution for the exercise of the *jus cunni* as it could have as an indemnification for the loss of human live stock. Indeed, the two may well represent different aspects of the lord's absolute power over his serfs: the indemnification idea may account for his ownership of their persons as a piece of property that could be bought and sold, and the *jus primae noctis* fee may reflect his complete control over that bit of property, even down to its nuptial and sexual activities. When all is said and done, that is far more power than a person of today possesses over most of his inanimate property, as say a house, which of course he may sell, but frequently not as he wishes [as in some localities sales to Negroes is strictly, albeit illegally, prohibited], nor may he in most instances put it to any use he sees fit, as its conversion to a gambling house, brothel, slaughter-house, or the like would soon be halted by the police.

Another custom commonly taken as proof of a previous *jus primae noctis* which is disputed by certain authorities is the fee which the bridegroom has been obliged in various localities to pay to the ecclesiastical authority of his neighborhood for the privilege of sleeping with his bride on the first night, or even first few nights, of his marriage. It is said that in the 14th century Phillip VI and Charles VI attempted futilely to persuade the Bishops of Amiens to discontinue the old practice of levying a considerable fine on each newly married couple under their jurisdiction for gaining their permission to have intercourse during the first three nights of their marriage. But, say the antagonists of belief in the existence of the *jus cunni,* it is quite obvious that this fee was not intended as compensation for the churchmen's giving up of their right to deflower the bride, but simply as payment for a special dispensation, as the Catholic Church had prescribed that newly married couples should pass the first night of their marriage in chastity, or in some cases even follow the example set by Tobias and Sarah and observe it during the first three nights. This, like all prohibitions of the Church, including even that against murder, could readily be set aside in consideration of a suitable cash payment, and hence the fee. Such a reason for this fine or fee is not at all unlikely, as throughout its history the Church has never overlooked an opportunity to make levies on personal matters that were not in the least any of its business, but it still does not disprove that similar fees might have originated in the priestly relinquishment of the *jus primae noctis,* for the Church, like the Government, never hesitates to collect as many times as possible for the same thing.

So the controversy has gone. Some authorities have piled up evidence to show that at certain times in various places the practice of the *jus primae noctis* was well established, while others have employed almost the same data to prove that it was a superstition that was rarely,

if ever, in force. But about the sanest and most logical conclusion on the matter would seem to be that arrived at by Westermarck:

"Yet even though the fine or fee paid to the feudal lord or the ecclesiastical authority has been grossly misinterpreted, there must have been some reason for the misinterpretation. It is not easy to see how the idea of a *jus primae noctis* could have entered the heads of the people if there had not been some tradition of such a right; travellers' tales from distant parts of the world could hardly account for an idea of this sort. Dr. Pfannenschmid has pointed out that the belief in the seignorial privilege has been found especially in districts and places which have been inhabitated for long by a celtic or partly pro-celtic population, and thinks that it hints at an ancient right, even though a *jus primae noctis* in the traditional sense of the term had not existed in the Middle Ages. In support of this suggestion I wish to draw attention not only to the legendary statements of old Scottish historians but, in particular, to ancient Irish documents. In the description of the battle of Gabhra, fought A.D. 283, we read that Cairbre, the son of Art, had a fair, mild-eyed, and modest daughter, whom the son of the king or lord of the Decies came to seek as his wife. But when Fionn and the Fenians of Ireland heard of this, they dispatched messengers to Cairbre to remind him to pay the tribute consisting of 20 ounces of gold or the right of cohabiting with the princess the night previous to her marriage. In the old Irish manuscript 'The Book of Leinster,' which was compiled in part about the middle of the 12th century, it is said that great honor was bestowed on Conchobar, King of Ulster, who lived at the time when Christ was born; for every man who had a marriageable daughter let her sleep the first night with him. In another manuscript, 'Leabhar na h-Uidhri,' which contains a collection of pieces in the Irish language compiled about A.D. 1100, it is likewise stated that the same king deflowered all the virgins of Ulster; and it is indicated that the defloration of maidens was a duty incumbent on him. This suggests that we have here to do, not with a mere privilege exacted by a ruler, but with a custom rooted in some popular idea similar to those found in other parts of the world in connection with the defloration of brides and maidens."

The *jus primae noctis* has even achieved the dignity of recognition by the theatre and has figured as a theme in a number of plays, comedies, and farces. Beaumont and Fletcher made use of it, as did Voltaire, L. de Boissy, and others, though its use in this manner is probably best known in Beaumarchais' "Mariage de Figaro." But the most curious thing about the *jus primae noctis* is that a custom or practice of such antiquity and wide-spread currency, whether in fact or superstition, and which has received such a large amount of varied, and often heated, discussion, should at this late date still remain in such a state of scholarly confusion and not have been accorded any really thorough, objective, and learned examination and clarified in any definitive treatise, as almost all other important aspects of folk mores have.

THE FIG

There are numerous persons—undoubtedly quite happy and living a reasonably full and satisfying life—who naively understand by the term *fig* simply rather a sweet fruit more or less resistant to chewing and somewhat hazardous to the welfare of dentures. These are to be found in that section, the most pitiable section, of the ranks of the clean-minded: those who are so because no opportunity of education or experience has ever offered to make them otherwise. Theirs is the tenuous innocence of ignorance. But (Priapus being propitious) we shall

soon change all that and by imparting certain dark information arrange it that shortly they shall be leering lewdly at the slightest mention of the heretofore quite innocent word.

This is not the place to go into details on that ancient form of nature worship known as *phallicism,* a type of adoration still assiduously carried on in the back seats of parked jalopies and in run-down tourist cabins. Suffice it to say that the object of this worship was the *membrum virile,* the primary male genital organ, in a state attentive to whatever might supervene. Fundamentally, this object of worship, this phallus, stood simply as a symbol for the mighty forces that lay behind it and operated through it—the forces of life and the propagation of life, the forces that made the continuation of mankind possible, plus the genuine essence and joy and substance of living. But, as has happened with all gods, the symbol became confused with the entity it stood for and ended by pretty completely replacing the god-idea behind it. Just as the great majority of Catholics are today far more concerned with how closely they rub against the toe of the statue of some Saint or other, the thousands of miles they may travel to view one of the dozen-odd extant foreskins of Jesus Christ, or the gusto with which they slobber over a Pontifical ring, so did the ancients come to ignore or push to the background the vital forces of nature symbolically summed up in the Phallus and make of the image a god in itself to which homage was paid and favors were asked directly and not as through an intermediary. Gods, like big business executives, tend to become obscured by the hired hands.

But there are certain advantages in reducing godhead to its symbol, chief among which are that it becomes finite, and hence more readily tenable to the average groping mind, and above all that it becomes possessable and portable. Even the most primitive mind must appreciate the utter impossibility of ever attaining to any sort of ownership or control over an intangible god, but let that godhead be imprisoned in some sort of tangible, sunstantial object and it becomes a different story indeed. It is difficult in the extreme to make any sort of offering, whether propitiatory, supplicatory, or votive, to an abstract god-idea—much like the frustration experienced at an elegant tea where there is offered no other repository for tea, cake, napkin, lemon, spoon, fork, *et al* than an unstable knee garbed in one's best pants that one certainly does not want to send again to the cleaner's before the end of the month, —but when that god-essence is circumscribed within a material object of some sort, it all becomes beautifully simple. It becomes a matter of small difficulty to hang on this object, or objective, of worship varicolored wreaths, to sacrifice before it animals from one's flocks, to set before it offerings of the first-fruits from one's fields, or to deliver over to it the virginity of one's daughter. Conversely, it also offers the opportunity of recourse. If someone has a beef because the god did not deliver on the line, it is a simple matter to take the god to task and punish him merely by failing to come across with his customary "cut" of whatever the offerings might have been or by defiling him in some manner, such as utilizing his feet as a urinal, if he happened to be in the form of a large statue or image, or casting him into the privy if he happened to be small or amuletic. Yes, indeed, the materialization of godhead would have been a great step forward in the comfort and liberation of man if only it had not come about that the materialized gods took on, or rather were taken over by, a set of managers: the priesthood. But that is another story.

However, let us get back to the *fig.* The term has several applications, the most obvious and decent of which is to a certain type of fruit, but this we shall at once pass over. The ancient Romans also employed the word to designate hemorrhoids with the implication that these anal extrusions were the consequence of habitual passive sodom-

itical practices; but this, too, we shall leave without further comment. It is with the *fig* that is derivative of the material representation of the phallic god-idea that we are concerned here.

Any religion built on fear (and what important religion isn't?) is concerned with self-protection against a great variety of evil influences, which either oppose a supposedly "all-powerful" deity who seems helpless to destroy them, or are maliciously sent by an "all-good" deity as a punishment or warning against people whom he "loves" and is presumed to have created but whom he cannot control upon any more reasonable basis than a universal fear of reprisal. Since the god is felt to be the natural antidote to these ubiquitous malign influences and since a part of "godness" is felt to be contained within a representation of the god, the touching, being near, or wearing of such representations would naturally be considered as protective on the ancient principle of sympathetic magic.

But an intangible god is a little difficult to represent, and were it tried there would doubtless be a great lack of uniformity in the results. However, the chief attributes of a god or other holy person are generally pretty well agreed on, and such attributes may much more readily and consistently be pictured and may thus be made indirectly to represent the god. A common example is the "Bleeding Heart" charms, and pictures to be found in such profusion.

In nature worship, the outstanding attribute of godhead is fertility, the power of copious reproduction. As this power or force is wholly intangible, its most obvious and logical representation is under the form of the organs that implement it, the genitalia—usually the male, often the female, and sometimes the two in conjunction. So it became the custom to hang about the neck, or wear elsewhere on the person, little images of the male genitals, the male trinity of penis and two testicles with the membrum virile in a state of turgescence, so as to ward off evil or perhaps just to promote good luck in general. Such an amuletic image was known as a *fascinum,* and in parts of Italy parents to this day will hang little *fascina* on ribbons from their children's shoulders as a safeguard to their welfare.

Now, representations and symbols have a way of becoming modified and conventionalized with the passage of time, and to this the *fascinum* was no exception. The original well-modeled reproduction of the mentule gradually changed over into a straight member, the two testicles merged into another shorter and heavier one that lay across an extremity of the first and the whole became a tau or T-cross, of which the modern Christian cross is a later modification. Thus, when today a prim and proper Catholic maid wears a crucifix about her neck with the smug arrogance of the self-appointed elect of God, she is at bottom one with an ancient Roman maiden who similarly wore a most realistic phallus about her neck to invoke the aid and protection of dim but potent powers. It is amusing to consider what would be the horrified reaction of this demure modern miss if by some magic the crucifix on her neck could suddenly be transformed back into the form of its amuletic progenitor. And when a desiccated Catholic spinster gives the rosary a thorough going over with an eye to promoting herself a husband and finishes by kissing the cross, she can scarcely be aware of the act she is symbolically performing—or is she?

The conventionalizations of the phallus or fascinum were many and varied, some obvious and others quite recondite, but one of the most curious and interesting is that of the phallic, or sometimes termed ithyphallic, hand which the Italians call the *fico,* or fig. Among the ancients there were two general forms of the phallic hand. One of them, and the one which is generally conceded to be the more ancient, is made by having the middle finger extend straight forward while the rest of the hand, the thumb and the other fingers, is doubled up or clenched

so that there is formed a fist from which the middle finger sticks out stiffly. The symbolism here is quite obvious: the straight middle finger represents the erect penis and the clenched fist on both sides of its one end signifies the testicles in their scrotum. In the second basic form of the fig, the whole hand is clenched and the end of the thumb is made to protrude between the first and second fingers. With this a double interpretation is possible. As with the first, the doubled up hand may be taken as the testicles with the *membrum virile* extending from it; or the first and second fingers may be taken as the labia of the vulva with the thumb as the male member intromittent to them, the whole thing thus symbolizing the act of copulation.

The apparently instinctive association between the middle finger and the verge may be worth a few words of comment in passing. So well established was this in ancient times that a common term amongst the Romans for this finger was *digitus impudicus* or *digitus infamis*, which is to say "the shameful finger." The Greeks called it *katapugon*, which signified much the same thing as the Latin name for it, save that it placed a little more emphasis upon certain degrading employments to which this finger was put. And, indeed, the middle finger does seem admirably suited to a variety of pseudo-penile purposes besides the symbolic. Just ask any present-day active young Casanova which digit is utilized in carrying on that great American after-dark sport indigenous to the back seats of jalopies and almost invariably will the answer support our contention. This finger may be supported by the others on either side and thus managed with a rare degree of dexterity and control. Nor is it limited to pinchhitting for the mentule in its questionable applications. Contributing to the Romans' qualification of it as "shameful" was the fact that the mothers of that time habitually used this finger to cleanse their children after defecation, and all one need do is watch a person suffering from badly itching hemorrhoids trying secretly to get a little relief from his torment to be convinced that this instinct is yet today by no means dead.

As has been indicated, both forms of the phallic hand, or *ficus* as the Romans labeled it, enjoyed wide currency in the form of various amulets or charms intended for magical protective purposes. A number of these old Roman charms are to be found yet today, made of various materials, such as bronze, coral, lapis lazuli, crystal, etc., and of a size and design such as obviously to have been intended to be hung about the neck or worn elsewhere on the person. The celebrated *Musee Secret* at Naples has (or at least did have before World War II) some excellent and most curious examples of such amulets, one of which is in the form of two arms joined at the elbows, one of them terminating in an actual phallus and the other in a phallic hand, thus combining the real symbol with its conventionalization, and perhaps felt to exert double power. This object seems to have been designed for wearing by women as earrings.

But the use of the fig was not restricted to amulets. Indeed, much of its curiosity derives from the fact that it is one of the few phallic symbols that may as readily be employed as a gesture as in a material representation. In the gesture as in the amulet, both types of fig found a place, the extended middle finger and the thumb between the fingers. Like the amulet, and in all probability antedating it, the gesture was felt to exert a magical protective influence. As a matter of fact, it is by no means unlikely that the not at all uncommon modern practice of crossing one's fingers for luck when in a tense situation is a remnant of that ancient superstition.

But the gesticulatory fig has easily received its most widespread utilization as a means of conveying contempt or insult. Simply to make this gesture in the direction of some person might indicate anything from that he was a generally low and worthless fellow about whom the gesticulator cared not a hoot, to the implied accusation that the person

was given to obscene, vicious, or immoral practices. The ancient Greeks called making a hand of this sort at someone *pkimalizein* and considered that it was an extreme insult because it was taken to intimate that the person to whom it was addressed was given to sodomy. That the Romans later attached the same meaning to it is borne out by several of Martial's epigrams, as for example the one [II, 28] that opens:

Rideto, multum, qui te, Sextille, cinaedum
Dixerit, et digitum porrigito medium.

which is to say:

Jeer at him, Sextillus, who calls you a catamite,
And extend your middle finger.

But its major employment was simply to indicate scorn or insult to another and carried no implication of unnatural vice. I recall that in a movie of some 20 years ago, more or less, (which I think must have been titled "The Cossacks" for it was concerned with the efforts of a young man to become worthy of joining that horsy fraternity) the star, John Gilbert, quite openly made the thumb-through-fingers fig at some devilish fellows who were mocking him. The fact that this got past the ever-prurient Hollywood censors gives some indication of the state of the general information of that blue-nosed gentry. However, the public of today as a whole is no better informed and are almost to a man unaware of this elegant and subtle means of insult, having substituted for it the crude and unimaginative verbal equivalent: " . . . . you!"

As we have said, this gesture with the hand was called *ficus* by the olden Romans, and though the term is certainly venerable, there is no way of determining just when it came into usage, or how it came to be identified with the fruit of the same name, which identification has extended through many languages, though it in all probability originally stemmed from the employment of the name of the fruit as a colloquial or slang designation for the genitals. But even this does not make things any too clear as it is most likely that the use of *fig* in this connection would be in reference to the female pudendum, the simile being between the rounded fruit with a shallow cleft down one side and the plump labia majora of the female genitalia with the division between them. Other fruits, as in particular the apricot and the pomegranate, carried similar erotic connotations, and in France of the Middle Ages the French word for the apricot—*abricot*—was a widely used synonym for the female organs, and even still obtained some currency in the last century. In Italian the word was *fica,* which later became altered to *fico,* and Florio gives as one of the definitions of the word *fica*: "a woman's quaint." In many ways it seems more logical to see the origin of the use of *fig* to indicate the phallic hand in the fact that the fig was considered as a fruit sacred to Priapus, and as the most notable attribute of Priapus was his extended male organ, it requires not too great a stretch of the imagination to see these two elements gradually merging and this particular form of the phallic symbol for some unascertainable reason taking on the name of the consecrated Priapic fruit. Incidentally, the fig was probably sacred to Priapus because of its great fruitfulness.

The word *fica,* of course, eventually passed beyond its homeland and was adopted into other languages, taking its erotic meaning with it. In Spanish it became *higa* and in French *figue,* both of which like their forebear referred to the amuletic and gesticulatory forms of the phallic hand, though as time went on there was greater emphasis on the latter. To make this gesture was called by the Italians *fare la fica,* to make or do the fig to someone, but in the Spanish phrase *dar una higa,* the sense was slightly altered to "give a fig." The French, however, reverted to the Italian idea of "making or doing" a fig in its *faire la figue.*

The French phrase was in use at least as far back as the 13th century, and if it was well enough accepted to be used in official documents at that time, its origin and vulgar use could well go back even earlier.

In the legal proceedings that were taken against the Templars in Paris in 1309, one of the brothers of this Order was rather jocosely asked, because of the general looseness and flippancy of his answers, "if he had been ordered by the said receptor [the official in the Templars whose function it was to admit new candidates] to make with his fingers the fig at the crucifix." The word here employed in the original document is the Latin form, *ficus*, so it would appear that at this time the word had not yet been adapted, or at least not well adapted, to the native form of *figue*. And it is again the Latin version that is to be found in a document of 1446 in which a certain person is accused of having "made figs" with both hands at another.

It seems that this expression must have reached the English language somewhere around the Elizabethan period, and the indications are that it was taken over from the Spaniards, with whom the English were in rather close contact at the time. Chief among this evidence are the facts that not only did the English follow the Spanish phrasing, i. e., to "give" the fig rather than to "make" or "do" it, but also that it was commonly referred to by Elizabethan writers as "the fig of Spain." A good example of this latter may be found in Shakespeare (*Henry V*, III. 6.) where he has Pistol exclaim:

"A figo for thy friendship!
The fig of Spain."

The phrase is still in some use in all these languages, as to a lesser degree is the making of the contemptuous gesture with the hand, as indeed is more or less the case throughout the countries of Western Europe. As recently as the early part of last century the Spanish dictionary of Baretti defined the word *higa* not only as: "A manner of scoffing at people, which consists in showing the thumb between the first and second finger, closing the fist, and pointing at the person to whom we want to give this hateful mark of contempt," but he also gives the word's original meaning as still having currency in the additional definition: "A little hand made of jet, which they hang about children to keep them from evil eyes; a superstitious custom." The making of the gesture of the fig was used not only to convey scorn, but it was also often pressed into service for its protective value when no amuletic fig was at hand. It is commonly said that at the battle of Solferino the king of Italy held his hand in his pocket with his fingers forming a fig as a means of protection against the enemy's shots.

But a change is gradually coming about. Though it is not unusual in this country to hear someone say that he "doesn't give a fig" for somebody, it is generally taken as meaning that he estimates that person at a trifling value. Indeed, this interpretation has given rise to another phrase, "not worth a fig," which may even be applied to inanimate objects and stresses the idea of low worth. In the 1930 edition of *Webster's Collegiate Dictionary* we may still find *fig* and *fico* defined as (in addition to "an insignificant trifle") "A snap of one's thumb; [which brings up an interesting possibility for the origin of the contemptuous snap of the fingers] a sign of contempt made with the fingers," but when we reach the 1941 *Thorndike's Century Senior Dictionary* we find *fig* given simply as a "very small amount." Thus does gentle time work far more effectively than the most vigorous and indefatigable of prurient reformers.

THE JUDICIAL CONGRESS

Possibly the most ancient of objective tests for the validity of anything is summed up in the well-worn proverb: "The proof of the pudding is in the eating." Now, this is a sane and straight-forward approach and its application extends far beyond the culinary, but the last place one

would expect to find it pressed into service would be in the ascertaining of the truth or falsity of a charge of impotency in a man. However, of all the most bizarre things that have transpired in this world, the choice items of the lot are ever to be found in the realm of sex—the peculiar nature of man, in himself and in his influence on his fellows, seems in some manner to make this so.

Whatever might have been the faults in the thinking of olden times, it at least on occasion exhibited an amazing and rather charming directness. In the early centuries of the organized Christian faith when a girl, or even a nun, was accused of some wanton or licentious act, it was not uncommon to have a complete physical examination ordered for her and her innocence or guilt rested on the findings, or surmises, of the examiner. There are records to show that in the 4th century Syagrius, the Bishop of Verona, ordered that a nun be submitted to this humiliating procedure, and though his archbishop, St. Ambrose, subsequently gave official disapproval of Syagrius' sentence, these details in themselves give evidence of the existence of the practice. And though there frequently was other adverse opinion, this custom persisted for quite some time. The full details of a most curious report made to the Provost of Paris in 1672 on the examination made by two midwives, "with finger and eye," of a certain Olive Tisserand who had accused one Jacqûes Mudont of raping her, may be found in Nicolas Venette's *Picture of Conjugal Love* (Haldeman-Julius Publications $2) and offers not only a proof of how relatively recently such examinations were still in vogue, but also gives a most interesting insight into the methods of conducting them.

Now, while a simple physical examination might well satisfy the authorities as to whether or no a girl was virgin, it was of small value, particularly in the early days of diagnostic medicine, in determining a man's potency or lack of it, and in the old days the charge of impotency was about as over-worked in cases of marital discord as is that of "mental cruelty" in the present-day divorce courts. So, what to the unspoiled and direct mind would be the most obvious and direct method of testing the truth of a woman's charge of impotence against her husband, on the grounds either that he was failing to fulfill his "conjugal duty" toward her or was incapable of engendering any children on her? Simply to have the pair get into bed together in the presence of competent "expert" witnesses who would carefully note, and later report back to the Magistrate, the degree of success or failure with which the man carried out his end of the marital act. If for any reason he proved unable properly to acquit himself of his end of the bargain, it was generally conceded that the woman's claims were substantiated, but if he performed with brilliance and vigor the woman was usually considered to be at fault for any dissatisfaction between them or their childless condition. Thus there evolved one of the most curious of procedures of the jurisprudence of former times—the so-called "Judicial Congress."

The Judicial Congress, which seems to have been pretty thoroughly confined to France, was a natural outcome of the legal attitude of the time which accorded little value to such moral proofs as sworn statements, character references, and the like, but depended almost solely on material evidence such as could be vouched for by eye witnesses. The Court's chief, and often only, concern, was the establishment of the fact in question, and no means were too ridiculous or outrageous which in its mind tended toward that end. If there were no eye witnesses, whenever possible the judge would appoint some (always "expert," regardless of how many of them might be sons-in-law and cousins of the judge) who were supposed to go out and see what they could see and then bring back the results of their looking to the judge, who would place far greater credence in their testimony than in anything the litigants might have to say on the subject in hand. So when a woman entered

suit for divorce against her husband on the grounds of impotency, the *Congres,* as the French called it, was the only device by which the inevitable Court-appointed eye witnesses could function.

As to when the Judicial Congress originated, most authorities have concurred in declaring that it did not spring into usage before the beginning of the 16th century. That it was well established in the 17th century is attested to by the tone of a writer of that period [Antoine Hotman, *Traite premier de la dissolution de Mariage pour l'impuissance et froideur de l'homme, ou de la Femme,* p. 63.] who says of it: "What is still more shameful, is that in some trials the men have examined the woman and, contrarily, the women have been permitted to examine the man. This has caused so much derision and mockery that such procedures have served for merry tales and sportive talk in a great many places."

As might well be expected, a good deal of abuse and horseplay crept into the conducting of the Congress, and it was this in all probability that contributed far more to the "derision and mockery" spoken of than the procedure itself. For in its inception the Judicial Congress was no light or sportive thing, but a deadly serious means by which the sober legal minds of the time sought (according to their lights) to do the best justice possible in granting divorces. When you come right down to it, the Congress was not worthy of half the "derision and mockery" that should be the lot of most of the present-day legal procedures attaching to the various aspects of sex, as in particular that hallowed bit of juridical tomfoolery that obtains in the state of New York, and a few others, by which it is necessary for a gallant husband who wishes to allow his wife to have a divorce to be "discovered" in his shirt-sleeves in a hotel room with a "strange" woman (ineluctably a blonde), regardless of how many good, sane, normal reasons the couple may have for wishing to separate.

There are, however, some authorities who see the Judicial Congress in an embryonic form at a much earlier date, even to the first portion of the Middle Ages. There are even some who assert that it originated with the Church. Pope Gregory the Great, who was elevated to the Pontificate in the year 590, seems to have been the first to give the bishops the right of passing on questions of this sort. There are records of a number of cases to bear out the authority of the Church in such matters, as in particular the instance (mentioned by Bayle) of the dissolution of the marriage of Alphonso VI. of Portugal and his Consort, which was pronounced in 1688. Further proof that the Judicial Congress owed its origin to the Church, which undoubtedly considered it the best means for deciding questions of impotence, is offered by President Boutrier and other writers who declare that in former times *only* the ecclesiastical judges, and none of the secular ones, were empowered to consider cases of impotency. This origin and the great antiquity of the practice is further attested to by the 17th Article of the Capitulars of Pepin, which date back to the year 752, which makes direct reference to it. This article states as an established principle that the impotency of a husband should be regarded as a lawful cause for divorce, and that proof of such impotency should be given and the fact verified at the foot of the Cross—*exeant ad crucem, et si verum fuerit, separantur.*

Just when the Judicial Congress (which, of course, was its designation only in later times) was adopted by secular law is not readily apparent. It is said by some that the first judicial sentence that ordered a Congress was brought about by a bold and shameless young man who, on having been accused of impotence, demanded of the court the right to demonstrate his sexual power before witnesses. After this demand had been complied with, this procedure came to be adopted into the jurisprudence of the country.

As for the method of carrying out the Judicial Congress, there were

undoubtedly small divergences between various parts of the country and different magistrates, but for a general picture of the practice we can probably do no better than translate the archaic French of an old and quaint description of it which may be found in Vincent Tagereau's *Discours sur l'impuissance de l'homme ou de la femme*:

"The form which the Congress ordinarily assumes is this: that on the day and the hour set, and the Experts known or named (which generally are those same ones who made the examination to determine whether or no the man has made intromission after having already reported his wife virgin and uncorrupted), the judge takes the oath of the litigant parties to the effect that they will attempt in good faith and without dissimulation to accomplish the work of marriage without bringing about any hindrance on the part of the one or the other; and of the Experts that they will render a faithful report of what shall come to pass in the Congress.

"This done, the parties and the experts retire into a chamber that has been prepared for this, where the man and the woman are examined anew, the man to find out if he has any disease or has had anything happen to him since the first examination that might seem to contribute to his impotence, and the woman in order to consider the condition of her shameful parts and by this means to become acquainted with the difference between her opening and dilatation, before and after the Congress, and whether or not the intromission will have been accomplished; without, however, speaking in their report of the virginity or corruption of the woman, reputedly virgin, already having been reported as such, unless there has been a further examination for this purpose.

"In some trials (as in that of Bray, 1578) the parties are examined naked from the top of the head to the soles of the feet, in all parts of their body, *etiam in podice*, in order to know if there is anything about them that could promote or hinder the Congress. Then the shameful parts of the man were washed in tepid water, and the woman was placed in a half-bath, where she remained for some time. This done, the man and the woman would lie down together in a bed in the full light of day with the Experts present, who would remain in the room, or retire (if both or one of the parties required it) to some nearby closet or gallery, but with the door nevertheless half-open, and when the matrons took up their position near the bed and the curtains were drawn, it was up to the man to set about making proof of his potency by cohabiting carnally with the female party and making intromission. This often led to shameful and ridiculous disputes, the man complaining that the female party would not let him go to work and hindered intromission; and she denying it and saying that he wished to put in his finger and dilate and open her by that means; so that it was necessary for a man to be without any uneasiness and worse than any beast or his *mentula velut digito uteretur*. But if nevertheless he did not slacken in the event he was in the proper condition, and if these indignities were not obstruction enough there could be yet others to his making intromission for he might also be powerless, whatever erection he might have, if the female party wished to hinder him by holding her hands and knees so that he could do nothing.

"Finally, after the parties had been for some time in the bed, as for an hour or two, the Experts would call out or, if they got tired of waiting, would of their own accord draw near and open the curtains so as to inform themselves of what had taken place between the couple, and they would examine the woman afresh so as to determine if she were more open and dilated than when she was put in the bed and if the intromission had been thus accomplished, *an facta sit emission, ubi, quid et quale emissio*. All of which does not take place without the use of wax-candles and glasses such as people make use of for their old age, nor without researches most dirty and odious. And then they draw up

their official report of what has taken place at the Congress (or perhaps better, such a report as they wish to make), which they deliver to the Judge, who is in the same building in a hall or chamber apart, along with the procurators and patricians of the court of the Church, awaiting the end of this act, the report of which is always to the disadvantage of the men on failure to have made intromission, without which neither erection *etiam sufficiens ad coeundem* nor emission can prevent the separation, as is seen from the official reports of the Congresses of De Bray of the 11th and 21st of April, 1578. At these Congresses, and principally the first, erection was reported sufficient *ad copulem carnqlem, et emisit extra vas sed non intromisit,* and for this separation was ordered; which intromission also cannot be accomplished in the Congress by any man, whomsoever he may be, if the woman does not give consent to it and keeps him from it, as has been signified."

* * *

In addition to the details on procedure given, this interesting old account testifies to the growing skepticism of the validity of this method for establishing a man's potency or lack of it and points out the possibility for abuses and frauds inherent in it, both of which were undoubtedly important elements in the final abandonment of the practice from French jurisprudence.

But for many years it did remain in force, and numerous were the divorces granted on little other grounds than the official report, the *proces verbal,* of the "experts," who in addition to being fallible through lack of technical training or just plain stupidity, were also susceptible to bribery. Proof of this is found in the fact that after many of the separations ordered on the findings from a Congress both parties later married other mates and subsequently had offspring. The details of a case of this sort (as dug out of the old records by John Davenport) are most curious and well worth reading:

"On the 2nd April, 1653, the Chevalier Rene de Cordovan, Marquis de Langey, aged 25 years, married Maria de Saint Simon de Courtomer between 13 and 14 years of age. The parties lived very happily for the first four years, that is to say, up to 1657, when the lady accused her husband of impotency. The complaint was heard before the *Lieutenant Civil* of the *Chatelet,* who appointed a jury to examine the parties. The examination was made, and the report declared that both parties were duly and fully qualified for performing the conjugal act. In order to invalidate this report the lady affirmed that if she was not a virgin it was in consequence of the brutal efforts of one whose impotency rendered him callous to the means he employed to satisfy himself. The Chevalier de Langey, much incensed at this imputation, demanded the *Congress;* the judge granted the petition, the wife appealed the sentence, but it was confirmed by the superior courts.

"For carrying the sentence into effect, the house of a person named Turpin, who kept baths, was chosen. Four physicians, five surgeons and five matrons were present. It is impossible to enter into the details of this disgusting perquisition; they are given in full detail in the *proces verbal.* Suffice it to say that the event being unfavorable to the chevalier, his marriage was declared void by a decree of the 8th of February, 1659.

"By this decree the chevalier was not only condemned to pay back the dowry he had had with his wife, but was prohibited from contracting another marriage—the lady, on the contrary, was allowed to enter into any other engagement she might think fit, as being considered entirely freed from her former bonds.

"The next day after this decree the chevalier made his protest against it before two notaries, declaring that he did not acknowledge himself to be impotent, and that he would, in defiance of the prohibition imposed on him, enter into wedlock again whenever he pleased.

"The lady St. Simon contracted a marriage with Peter de Caumont, Marquis de Boesle, and from this marriage were born three daughters. At the same time the Chevalier de Langey married Diana de Montault de Navaille, and their marriage was followed by the birth of seven children.

"In 1670 the Marchioness de Boesle, the ci-devant Countess de Langey, died."

* * *

Cases such as this, with numerous offspring resulting from marriages subsequent to a separation based on a Judicial Congress, at last opened even the heavy-lidded eyes of the jurists to the undependability of the procedure as a means of testing a husband's potency. Putting all considerations of indelicacy or coarseness aside, it appears most astonishing to the modern mind that it ever could have been envisaged at all seriously as such with all the circumstances operating so obviously to the detriment of the man. When it is recalled how even in the privacy of one's own home relatively small distractions—as a soap opera on the neighbor's radio or the sudden ringing of a telephone—will greatly inhibit, or even render impossible, the successful accomplishment of the love act, what possible hope could a poor fellow have of doing himself proud in a Congress with an antagonistic woman, his bed surrounded with five nosey matrons, and knowing that some six to a dozen "experts" were lurking around in the corners and clothes-closet eagerly awaiting the slightest pretext to find fault with his technique? Like our present divorce and alimony laws, the Judicial Congress had the cards all stacked in the woman's favor.

In later years, however, the actual Congress was frequently not fully carried out. When a complaint of impotency was entered by a wife against her husband, the magistrate had the authority to appoint some examiners to make a careful inspection of the husband's generative organs, and on their report he would form his decision as to the justness of the request for divorce without going to the extreme of ordering a full-dress (or perhaps undress would be the better term) Judicial Congress. How this mode of procedure operated may be judged from the following cases, the details of which are to be found in the reports and judgments of the Officialty at Paris.

Jean de But, master fringe maker, was in 1675, charged with impotency by Genevieve Helena Marcault, his wife; he being inspected by Renaulot, a physician, and Le Bel, a surgeon, by order of the official; they declared that, after a due and thorough examination of all the members and parts of the said De But, genital, as well as others which might throw a light on the case and likewise his condition of body, his age, the just conformation and proportion of his limbs, but especially his penis, which was found to be of as proper a thickness, length and color as could be wished; and likewise his testicles, which exhibited no perceptible viciousness or malformation, they are of opinion that from all these outward marks, which are the only ones they consider themselves justified in judging from, the said De But is capacitated to perform the matrimonial act. Signed by them at Paris, July 18, 1675, and attested by the Sieur de Combes. And on August 23, 1675, by the sentence of M. Benjamin, official, the said Marcault was non-suited and ordered to return to her husband and cohabit with him.

* * *

Inspection having been ordered by the official of Paris of the body of Joseph Le Page, who is taxed with impotency by Nicola de Loris, his wife, the said inspection was made by Deuxivoi and De Farci, physicians, and Paris and Du Fertre, surgeons; their report is as follows:

"We have found the exterior of this person to be like that of other men's, the penis of a good conformation and naturally situated, with the nut glans bare, its adjoining parts fringed with

soft, fine hair; the scrotum of an exceptional thickness and extent, and in it vessels of good conformation and size, but terminating unequally; on the right side, they end in a small, flabby substance instead of a true testicle; and on the left side we observe a testicle fixed to the extremity of one of the vessels, as usual, invested in its tunicle, which left testicle we do not find to be at all flabby, but of middling size: on the whole, we are of opinion that the said Le Page is capable of the conjugal act but in a feeble manner. Signed and dated March 5, 1684. By the sentence of M. Cheron, the official, the said De Loris's petition is rejected, and she is enjoined to return to her husband."

* * *

Peter Damour being accused of impotency by his wife Louisa Tillot an inspection was ordered to be made by Rainset and Afforti, physicians, and Franchet and Colignon, surgeons. They report as follows: "We have proceeded to inspect Peter Damour, master saddler at Paris, and having attentively examined his parts of generation, we have found them well constituted and in good condition as to their size, conformation, and situation for the conjugal act; according, however, to the statement of the said Damour himself, the erection is imperfect, the penis not being sufficiently rigid for perforating the vagina; admitting this, however, to be the case, we are of opinion that the imperfection may be remedied, repaired, and rectified, in time, by proper remedies. Signed January 16, 1703." In consequence the official, M. Vivant, refused Tillot's demand, and ordered her to go home to her husband and cohabit with him as her lawful spouse.

* * *

In the suit of Marie Louise Bucheres accusing of impotency Antoine de Bret, an inspection was ordered and performed by Venage and Lita, physicians, Lombard and Delon, surgeons. They reported as follows: "We find the string of the foreskin shorter than it should be for giving the nut free scope to extend itself when turgid: that the body of the left testicle is diminutive and decayed, its tunicle separated, the spermatic vessels much disordered by crooked swollen veins—that the right testicle is not of a due thickness, though thicker than the other: that it is somewhat withered and the spermatic vessels disordered by crooked swollen veins. On all which counts we do not think that the natural parts of the said Sieur de Bret have all the disposition requisite for the well performing of the functions they were designed for; yet we cannot say he is impotent until we have inspected the wife. Paris July 11, 1703. Signed." On the 22nd of July, 1703, the wife was inspected by the said physicians and surgeons and by two matrons; the result of which was that they observed no viciousness of conformation in her womb: the valvula were circular and the carunculae myrtiformes, placed in the neck of the vagina, were soft, supple, flexible, entire, and did not seem to have suffered any violence or displacing, and the cavity of the womb-pipe was free and without any obstacle. Therefore they are of opinion that she is not incapable of the conjugal act, and that there has been no intromission, consequently that she is a virgin, and that if the marriage had not been consummated, it is her husband's fault, because of his great debility and defective conformation of his parts of generation. Another inspection of the same parties was ordered Aug. 1, 1703. Bourges and Thuilier being the physicians, and Tranchet and Meri the surgeons, who declared that after due and careful examination they had found no defect which could hinder generation. Their report is dated Paris, Aug. 13, 1703. M. Chapelier ordered, in consequence, both parties,—viz., the Sieur De Bret and the said Bucheres to acknowledge each other for man and wife.

* * *

Examination by qualified experts—though with much sounder, modern technique, of course—is by no means unknown at the present day in suits for divorce on grounds of impotence or sterility, and the findings are of prime importance in the verdict. But the futility of the Judicial Congress in such cases became so apparent to the general public that even the Law was at last forced to recognize it and abandon the practice.

It is generally considered that three main causes entered into its abolition: its lewdness or obscenity; its uselessness or impracticability; and its disadvantages and unjust consequences.

As to its lewdness, a more coldly calculated bit of legally sanctioned indecency would be hard to imagine, making a semi-public exhibition as it did of the most intimate and hallowed of the rites of marriage. Its uselessness for giving any sort of reliable proof of the state of a man's potency has already been touched on, the nature of the situation being all to the man's disadvantage. Indeed, the records indicate that out of 10 ordinarily quite vigorous and virile men there could scarcely be one who could hope to be successful under the trying circumstances of the Congress. Its inutility was further attested to by the number of men who, divorced as a consequence of the Congress, sired a number of sound children in subsequent marriages. Anyone at all familiar with the bases for that most baffling and distressing of all varieties of impotence, the psychic, will readily perceive that, far from demonstrating the impotency of a sexually feeble man, it furnished a situation ideally suited for bringing on an attack of psychic impotence, only temporary in most instances but at times of extended duration. And the disadvantages and evil consequences were many and varied, from the unwarranted breaking up of a home and dissolution of a legitimate marriage, through the shame cast on the man and the unjust and frequently exorbitant damages exacted from him, to the bitterness and frustration occasioned by subsequent evidence of the error of the findings.

But undoubtedly the biggest factor of all in doing away with the Judicial Congress was simply public opinion. Just as with Prohibition in this country, the mass of the people finally came to hold it in such contempt and ridicule that it lost all validity. It is often contended that Boileau contributed no small part in the growth of this scorn with his verse:

> Never did a hind in rut prefer a charge of impotence,
> And drag from deep within the woods a stag to face a sentence;
> And never did a judge of theirs for Congress make provisions,
> For this most ludicrous of words has not stained his decisions.

It was on February 18, 1677, that the Judicial Congress received its official death-blow when, under the famous President Lamoignon, the Parliament of Paris issued a decree that forbade its practice in any court whatsoever, ecclesiastical or civil.

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